



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20543

March 20, 2000

**MEMORANDUM**

**TO:** The Commission

**FROM:** Lawrence M. Noble  
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**SUBJECT:** Additional Information Related to Audit Referral #99-16 --  
Dole for President Committee, Dole/Kemp '96, Inc. and US Airways, Inc.

This memorandum is in response to questions from several Commissioners concerning the Department of Transportation ("DOT") regulations referenced in the First General Counsel's Report in this matter, dated February 28, 2000,<sup>1</sup> in which this Office recommended that the Commission find no reason to believe that Dole/Kemp '96, Inc. (the "General Committee"), the Dole for President Committee (the "Primary Committee"), or US Airways, Inc. violated 2 U.S.C. § 441b(a).

The DOT regulations require certain conditions for extensions of unsecured credit by air carriers. See 14 C.F.R. § 374a (1999). These regulations were promulgated pursuant to 2 U.S.C. § 451, which required certain agencies to promulgate regulations concerning the extension of unsecured credit to federal candidates by entities regulated by those agencies. The DOT regulations do not prohibit unsecured credit by air carriers, but rather, require certain conditions for the extension of such credit. See 14 C.F.R. § 374a.

The DOT regulations govern the extension of unsecured credit by air carriers to candidates for federal office or persons acting on their behalf in connection with a campaign for

<sup>1</sup> The First General Counsel's Report was on the executive session agenda for March 14, 2000, and was held over until March 21, 2000.

federal office. 14 C.F.R. § 374a.4. An air carrier must comply with certain conditions in order to extend credit for transportation absent adequate security or full payment in advance to "any person it knows, or has reasons to know, is a candidate or a person acting on behalf of such candidate, in connection with the campaign of such candidate." 14 C.F.R. § 374a.4(a). One of these conditions is that "[a]t least once a month the air carrier shall submit to each such candidate or person a statement covering all unsecured credit extended to such candidate or person," whether in connection with the candidate's campaign or otherwise. 14 C.F.R. § 374a.4(a)(1). These statements shall be mailed no later than the second business day following the last day of the billing period covered by the statement. 14 C.F.R. § 374a.4(a)(2). The DOT's regulations further provide that the amount of indebtedness shown on each statement shall be payable in full no later than 25 days after the last day of the billing period, after which time the indebtedness shall be overdue. 14 C.F.R. § 374a.4(a)(3). Moreover, unsecured credit shall not be extended by an air carrier to a candidate, or to any person acting on behalf of a candidate so long as any overdue indebtedness of such candidate remains unpaid, in whole or in part, or so long as the air carrier shall know that any overdue indebtedness of such candidate to any other air carrier remains unpaid, in whole or in part. 14 C.F.R. § 374a.4(a)(4)(i). In addition, the regulations require that an air carrier be authorized in writing by a candidate to extend unsecured credit to any person acting on behalf of the candidate; that the air carrier notify the candidate of overdue indebtedness incurred by a person acting on behalf of the candidate, and that unless paid in full within 25 days after such notice, the overdue indebtedness shall be deemed the overdue indebtedness of the candidate. 14 C.F.R. § 374a.4(a)(5).

Further, the DOT regulations require air carriers to make monthly reports to the DOT of all credit furnished to candidates for transportation and separate reports for each candidate or person acting on behalf of a candidate with an aggregate indebtedness of over \$5,000 on the last day of the month. 14 C.F.R. § 374a.6. The regulations also include requirements that air carriers retain records of credit extended to candidates, including statements, invoices and bills, for two years after the election. 14 C.F.R. § 374a.7.

Based on the available information, it appears that US Airways, Inc. generally complied with the DOT regulations. The invoices provided by US Airways, Inc. indicate that it consistently sent a statement of amounts due to the General Committee every month from October 31, 1996 through October 7, 1998.<sup>2</sup> See 14 C.F.R. § 374a.4(a)(1). It appears that the matter was turned over to a law firm for collection in October 1998, and the law firm sent letters and invoices every month between November 3, 1998 and July 15, 1999. It also appears that US Airways, Inc. treated amounts not paid in full timely as overdue. See 14 C.F.R. § 374a.4(a)(3). Further, it appears that the General Committee's account was closed on November 22, 1996; thus, no

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<sup>2</sup> However, while US Airways, Inc. sent the General Committee monthly invoices, it is not clear whether all of them were mailed within two business days following the last day of the billing period covered by the statement. See 14 C.F.R. § 374a.4(a)(2).

unsecured credit was extended after the General Committee's account became overdue.<sup>3</sup> See 14 C.F.R. § 374a.4(a)(4)(i). The amount owed increased because of billings for flights taken during the campaign, before the account became past due, and the application of late fees. The available information does not make clear whether US Airways, Inc. was authorized in writing by Senator Dole to extend unsecured credit to any person acting on his behalf or whether US Airways, Inc. notified him of overdue indebtedness incurred by any such persons. See 14 C.F.R. § 374a.4(a)(5). However, it appears that one letter attempting to collect the overdue amount owed by the Committees was sent to Senator Dole.

In addition, it appears that US Airways, Inc. filed the required monthly reports of the amounts owed by the Committees with the DOT, because the DOT's monthly summaries of amounts owed by federal candidates forwarded to the Commission include amounts owed by the Committees to US Airways, Inc. See 14 C.F.R. § 374a.6. For example, the *Monthly Summary of Air Carrier's Extension of Credit to Political Candidates for the Federal Election of 1996*, dated February 29, 2000, states that "As of January 31, 1999, the air carriers reported unpaid balances as follows: . . . US Airways Dole for President \$315,707.20." See 14 C.F.R. § 374a.6. It also appears that US Airways, Inc. retained records of these transactions for at least two years following the election, since detailed documentation including invoices were provided to this Office. See 14 C.F.R. § 374a.7. Therefore, based on the available information, it appears that US Airways, Inc. complied with the DOT regulations at 14 C.F.R. § 374a.

Moreover, it does not appear that DOT would pursue any action against US Airways, Inc. if this matter were reported to the DOT. While drafting the First General Counsel's Report, staff of this Office called the DOT to ask what, if anything, they do concerning companies that are owed large amounts by campaigns. On several occasions, staff spoke with representatives of DOT, including the individual listed as a contact on the periodic DOT reports of amounts owed by political campaigns to air carriers and the Assistant General Counsel for Aviation Enforcement and Processing. Staff was informed that DOT receives the monthly reports from air carriers as long as the air carrier is owed any outstanding balance by a political candidate, and that DOT compiles this information and sends it to the Commission monthly. DOT does not use the information on the reports. According to the DOT representative, any collection of the debt is up to the private industry. The Assistant General Counsel for Aviation Enforcement and Processing informed this Office that to his knowledge, there has not been any enforcement matter arising

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<sup>3</sup> The Primary Committee received the Air Travel Card on July 26, 1995, and the same account was used for both the Primary Committee and the General Committee. It does not appear that the account became overdue until after the October 31, 1996 invoice, which states that the previous balance of \$525,033.15 was fully paid, and that new activity totaled \$561,439.42. The next invoice, dated December 4, 1996, states that no payment was received on the previous balance of \$561,439.42, and there was new activity of \$504,777.70. The "new activity" on this invoice were tickets issued on November 15, 1996 or earlier. According to US Airways, Inc., the account was closed on November 22, 1996. The DOT regulation treats amounts as overdue if they are not paid within 25 days of the end of the billing period, which would have been November 25, 1996 for the October 31, 1996 invoice. See 14 C.F.R. § 374a.4(a)(3). Since US Airways, Inc. did not extend additional credit after that date, it appears that it complied with the DOT regulation's requirement not to extend credit to a candidate with an overdue account. See 14 C.F.R. § 374a.4(a)(4)(i). The remaining invoices reflect credits, late fees, and several transactions on other airlines which occurred before November 1996.

from 14 C.F.R. § 374a, or concerning an air carrier that did not file properly, or that extended credit improperly. Moreover, he said that he did not know how such a matter would arise, as there has never been a compliance check to see if air carriers are following the regulations. He explained that the DOT has many record retention requirements for air carriers, but it generally does not check on compliance with them.

Based on the foregoing, this Office does not believe reporting this matter to the DOT is appropriate. Specifically, it appears that US Airways, Inc. complied with the DOT regulations at 14 C.F.R. § 374a. Moreover, based on the information provided by DOT representatives, it does not appear that the DOT would pursue this matter.